

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,  
vs.  
EARL B. HOOTEN, II,  
Respondent.

MAR 5 1987  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
CONFIDENTIAL Clerk

Case No. 68,643 and  
66,694

TFB Nos. 04B86N05  
and 04B86N60

REPORT AND RECOMMENDATIONS OF REFEREE

This cause was heard upon the complaint filed by The Florida Bar, the request for admissions filed by The Bar, the Stipulation filed February 9th, 1987, and pursuant to the Stipulation, the testimony taken on April 2nd, 1985 and the Report and Recommendations of Referee dated April 24th, 1985.

The complaint contains two Counts. The requests for admissions are deemed admitted and prove each allegation of the complaint without further evidence. The following findings of fact are based upon the admissions of Respondent and the testimony taken April 2nd, 1985.

COUNT I

In 1983 Aubrey C. Lewis employed Respondent to represent Lewis on a claim for damages against University Hospital of Jacksonville, Florida. Respondent settled the claim for \$165,000.00 cash. Two (2) checks, one for \$30,000.00 and one for \$136,000.00 were issued to Lewis, endorsed by him on April 5th, 1984 and April 19th, 1984, respectively and left with Respondent for the purpose of depositing the checks in Respondent's trust account. The funds were to be held by Respondent for Lewis pending the exchange of releases, the filing of a dismissal of the action and the completion of a dissolution action in which Lewis was then involved.

Respondent's employment agreement with Lewis entitled Respondent to forty percent of the settlement. Respondent issued checks to himself in the amount of \$15,600.00 on April 5th, 1984, and \$43,400.00 on April 19th, 1984 as payment toward his attorney fees. Respondent also paid with Lewis' approval \$10,000.00 to satisfy some of Lewis' obligations.

Lewis' dissolution action was completed in August, 1984. Shortly thereafter Lewis visited Respondent and requested his funds. Lewis was told by Respondent that he needed ten (10) days to take care of everything.

At the end of ten (10) days Lewis again requested his funds and was again stalled by Respondent for ten (10) more days. When that period expired Lewis called Respondent and was again stalled. This time Respondent told Lewis the hospital had a lien on the proceeds.

Lewis had the attorney representing him in the dissolution action visit Respondent. He, too, was stalled by Respondent, who did not reveal to the attorney that Respondent had misappropriated the funds.

Lewis employed an attorney who made a demand on Respondent and then filed suit against Respondent in December, 1984. In January, 1985, Lewis' attorney contacted him and told him to name an amount he would take in settlement because Respondent did not want to go to deposition. Lewis requested \$140,000.00 which Respondent paid by cashiers check the following day.

Respondent had used Lewis' funds to purchase the North Beach Restaurant in Jacksonville Beach. The \$140,000.00 used to pay Lewis was drawn from Respondent's trust account. In early 1984 Respondent settled a personal injury suit for \$185,000.00 for his client, Leslie Hawkins. When Respondent paid Lewis he used all of Hawkins' money and \$10,000.00 of funds owned by other clients.

## COUNT II

On December 2nd, 1985, Respondent entered a plea of nolo contendere to one Count of Grand Theft, a third degree felony, in violation of Florida Statute 812.014, in Case No. 85-7604 CF, in the Fourth Judicial Circuit of Duval County. The conviction was a result of Respondent's misappropriation of three (3) clients' trust funds. Respondent was adjudicated guilty of Grand Theft of the Second Degree and sentenced to six (6) months. He has served his sentence.

## RECOMMENDATION

I recommend that Respondent be found guilty of violating Integration Rule 11.02 (4) (money entrusted to an attorney for specific purpose is held in trust and must be applied only to that purpose); Disciplinary Rules 1-102 (A)(1) (violation of a disciplinary rule); 1-102 (A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude); 1-102 (A)(4) (a lawyer shall not engage in conduct involving dishonesty); 1-1020 (A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law); 9-102 (B)(1) (a lawyer shall promptly notify a client of the receipt of funds); 9-102 (B)(3) (a lawyer shall maintain complete records of all funds of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them); and 9-102 (B)(4) (a lawyer shall promptly pay to the client as requested by the client the funds in the possession of the lawyer which client is entitled to receive).

Earl "Buddy" B. Hooten, II is a graduate of Stetson College of law. Martindale Hubbell shows the year of his birth as 1946. He was admitted to The Florida Bar in 1972. Respondent was associated with several partnerships and has been a sole practitioner from 1980 to the present.

While it is true that some of the discrepancies in Respondent's trust accounts may have resulted from incompetent record keeping, substantial trust funds were stolen from Respondent's clients to purchase a restaurant and to repay Lewis.

When Lewis requested his money, Respondent lied to Lewis on several occasions before finally admitting he didn't have the money. He didn't repay Lewis until after Lewis filed suit and when he paid Lewis he did so with stolen trust account funds. Some of his clients remain unpaid.

I have no doubt that Respondent is remorseful and that he and his family have suffered emotionally and financially. I am unaware of any prior disciplinary record. There are no other unusual or extenuating circumstances.

If the purpose of discipline is to protect the public and to send a clear warning to lawyers the proper discipline for stealing trust funds must be disbarment. The ability and integrity to properly handle a client's funds is indispensable in the practice of law. As Justice Ehrlich said in The Florida Bar v. Kent, 484 So.2d 1230 (Fla. 1980):

"It is high time that we impose that discipline ... The Bar thinks that is the appropriate discipline, the public is entitled to that protection ..."

The crime results in client injury, harm to the legal profession and involves moral turpitude. There should be predictable results consisting of the ultimate penalty, the taking away of the privilege of practicing law.

I recommend that Respondent be disbarred.

I find the following costs were reasonably incurred by The Florida Bar:

Grievance Committee Level

Administrative Costs, pursuant to Integration Rule 11.06 (9)	\$	150.00
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Referee Level

Administrative Costs, pursuant to Integration Rule 11.06 (9)	\$	150.00
Court Reporter and Transcripts		90.00
Bar Counsel Travel		164.60
Auditor's Costs		8,257.67
Staff Investigator's Costs		597.05
Copies of Court Documents		15.00
TOTAL	\$	<u>9,424.32</u>

It is recommended that the costs be taxed to Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the Judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED this 4<sup>th</sup> day of March, 1987.

  
Richard O. Watson, Circuit Judge  
As Judicial Referee

Copies to: 3/4/87 RJ

Samuel S. Jacobson, Esq., Attorney for Respondent  
James N. Watson, Jr., Esq., Attorney for Complainant